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# Western Payments Alliance

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May 1, 1998

Cynthia L. Johnson  
Director, Cash Management Policy and Planning Division  
Financial Management Service  
U.S. Department of the Treasury  
401 14th Street, SW -- Room 420  
Washington, DC 20227

**Re: Notice of Proposed Rulemaking:  
31 CFR Part 210 -- Federal Government  
Participation in the Automated Clearing  
House**

Dear Ms Johnson:

The Western Payments Alliance (WesPay) is pleased to submit the following comments on the Financial Management Service Notice of Proposed Rulemaking: 31 CFR Part 210—Federal Government Participation in the Automated Clearing House. WesPay is a regional trade association supporting financial institution and corporate members' ACH programs in the states of California, Hawaii, Idaho, Nevada, Oregon, Utah, and the territory of Guam.

WesPay agrees with FMS efforts to align 31CFR Part210, to the greatest extent possible, with the National Automated Clearing House Association ("NACHA") Operating Rules. We recognize Financial Management's fiduciary role may require preemption, in whole or in part, certain provisions of the NACHA ACH Rules.

WesPay generally agrees with the proposed rulemaking changes as outlined in FMS's NPRM. However, there are specific areas in the proposal that would increase liability and impose unreasonable operational burden on Receiving Depository Financial Institutions ("RDFIs"). Specifically, these are

1. Suggested change to the current "45 day limited liability" provided for in Subpart B for post death benefits payments to open ended liability for the RDFI.
2. New requirement that the RDFI validate, in addition to the Depository Financial Institution ("DFI") account number, a second "data element" within the ACH transaction record.

Further, we strongly urge that FMS and other Government agencies adopt a check digit for all account numbers, such as the Social Security number. We think that a method should be available to ensure data integrity for the automated enrollment (ENR) process.

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This is especially important because of the anticipated increase in ENR volume as a result of EFT99 and the objectives of the largest distributor of ACH payments, Social Security Administration.

The use of a check digit for account numbers and financial institution routing numbers is in wide use and well understood. This could be easily implemented by choosing a check digit algorithm (modulus 10, for instance) and calculating the check digit and printing it on every document or check that is currently issued. This would also allow the account data verification for those individuals or companies that call or who may use computers to access Government agency services.

FMS has requested comment on an approach in which an RDFI would be liable for the amount of any post-death entries received, regardless of whether the RDFI had actual or constructive knowledge of the death. This liability structure, according to FMS, would make it possible to streamline the reclamation process by eliminating the certification and informational requirements imposed upon RDFIs, i.e., the "45 day limited liability" period. From the point of view of any individual RDFI, its liability would increase, since it would now become liable for any "ACH payments...that could be...reclaimed within a six year period following the date of the most recent payment." (U.S. Treasury Green Book, 1990 Edition, page 6-5). WesPay membership supports maintenance of the current Subpart B rule, which offers the protection of predictability of RDFI financial liability for individual reclamation incidents.

Our second comment relates to the proposed requirement that an RDFI be responsible, upon receipt of a prenote, for the verification of the account number and "at least one additional data element." NACHA's response to the NPRM states, in part:

"FMS is proposing to preempt the NACHA Rules ... in connection with prenotifications. In order to reduce the potential for misdirected entries, proposed Sec. 210.8(a) requires a financial institution that receives a prenotification relating to Government entries to verify the account number and at least one other identifying data element in the prenotification. This requirement supersedes the NACHA Rules, which specifically permit financial institutions to rely on the account number alone in posting a payment to an account.

**NACHA Response:** NACHA strongly objects to the proposed requirement that a financial institution receiving prenotifications relating to Government entries validate anything more than the account number. This requirement would result in substantial costs to financial institutions as manual exception processing would be almost certainly required to comply. Furthermore, the NACHA Rule FMS seeks to preempt (as well as the Uniform Commercial Code) recognizes that the account number of a beneficiary to a payment should be verified by the originator when the payment is authorized. We see no reason why the Federal Government should not adhere to the same common sense principle as private corporations and financial institutions in this regard."

WesPay agrees with NACHA's position on this issue. Our membership is strongly opposed to any changes to current statutory requirements that would result in increased

validation operations for the RDFI. RDFIs would incur substantial processing costs, with no concurrent benefit.

In closing, we again wish to express our support for Treasury Department efforts to more equitably align federal government ACH rules with those of the private sector. To that extent, WesPay is interested in assisting the Treasury Department, once final rules are adopted, in any training opportunities for participating DFIs that may arise in our service area.

Please feel free to contact me if you would like to discuss our comments in further detail.

Sincerely,

A handwritten signature in cursive script that reads "Michael Gilchrist for".

Peter Yeatrakas  
President & CEO

PH:mg

Cc:           WesPay Board of Directors  
              WesPay Rules & Operations Committee  
              Ian Macoy, NACHA